

# Congress of the United States

Washington, DC 20515

November 6, 2001

The Honorable Michael K. Powell  
Chairman, Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Dear Mr. Chairman:

We are writing with respect to the Commission's consideration of proposed changes to the wireless spectrum cap. We are concerned that the Commission may modify or eliminate the cap, resulting in a reduction of competition in the wireless marketplace. Since none of the current license-holders are using all of the spectrum they already possess, we see no pressing need to make changes to the spectrum cap. Furthermore, relaxation or elimination of the cap is likely to encourage unnecessary consolidation, relieve pressure on companies to innovate, and pose a significant risk to consumers in the form of higher prices and fewer choices. This is the very result the cap was put in place to avoid.

The spectrum cap is the tool primarily responsible for the creation of competition in the wireless marketplace, and it has helped to create a highly successful commercial mobile services market. The cap has served to foster innovation, create jobs, and lower prices for all consumers. As you know, it is currently set at 45 MHz. This reasonable limit has assured a robust number of wireless competitors, and has allowed the FCC in its allocation and licensing decisions to create the kind of competition that policymakers are still struggling to establish in local wireline telecommunications services and in the cable marketplace.

Congress decided to preempt all state regulation of rates for commercial mobile radio services in 1993 and to forebear from applying equal access requirements in 1996. Lawmakers pursued such a policy course counting upon the Commission's commitment to the creation of additional competition, as well as the FCC's implementation of a spectrum cap to yield a fully competitive wireless marketplace. In other words, retention of the spectrum cap, which ensures a healthy number of competitors in each market, has led to a more deregulated marketplace. We see no reason for the Commission to jeopardize this deregulatory environment by encouraging marketplace consolidation which undoubtedly will require greater government oversight.

As stated previously, the spectrum cap encourages innovation and investment. Companies operating under the cap are induced to invest in new digital compression technologies to achieve greater efficiency from their current assets as well as to deploy more spectrum efficient equipment and facilities. Perversely, if the Commission removes the cap, those that

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stand to benefit the most will be companies who have been among the least efficient in using their spectrum.

Furthermore, in September of 1999, the Commission recognized the importance of these factors when it reviewed the rule and decided to retain the 45 MHz cap. However, it lifted the cap to 55 MHz in rural areas to spur deployment of services. At that time, the Commission concluded that eliminating the spectrum cap would jeopardize the benefits (such as lower prices) that the cap has so far provided. In the past two years, we would be interested in knowing what has changed in the marketplace that warrants an FCC decision to substantially modify or eliminate the cap.

Lastly, some have argued that the cap needs to be eliminated or adjusted upwards so that companies can consolidate their spectrum resources within markets in order to launch new services, such as so-called "3G" services. As you know, in the vast majority of markets wireless companies are not currently constrained by the spectrum cap. Some companies are also offering advanced wireless services using their existing spectrum. Addressing additional spectrum needs for 3G or other services however, is a separate policy question from proposals regarding a rule ensuring competition in the marketplace. If additional spectrum is made available for auction or licensing, the cap can be adjusted without adversely affecting the current number of competitors in the marketplace.

Again, we strongly urge the Commission to reject pending proposals regarding the cap. Thank you in advance for considering our views with respect to this policy question.

Sincerely,

  
